

§ 103.10 Requests for records under the Freedom of Information Act.

(a) *Place and manner of requesting records*—(1) *Place*. Records should be requested from the office that maintains the records sought, if known, or from the Headquarters of the Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Records are maintained in the Headquarters, regional offices, service centers, district offices and the following suboffices: Agana, Guam; Albany, NY; Charlotte, NC; Cincinnati, OH; Hartford, CT; Indianapolis, IN; Las Vegas, NV; Louisville, KY; Memphis, TN; Milwaukee, WI; Norfolk, VA; Pittsburgh, PA; Providence, RI; Reno, NV; St. Louis, MO; Salt Lake City, UT; Spokane, WA; and St. Albans, VT. In certain cases, a district director may designate another Service office as a file control office. For locations of the Service's regional offices, service centers, district offices, and sub-offices see 8 CFR 100.4.

(2) *Manner of requesting records*. All Freedom of Information Act requests must be in writing. Requests may be submitted in person or by mail. If a request is made by mail, both the envelope and its contents must be clearly marked: "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." Any request for information not marked and addressed as specified will be so marked by Service personnel as soon as it is properly identified and shall be forwarded immediately to the appropriate office designated to control Freedom of Information Act requests. A request will not be deemed to have been received for purposes of the time period under 5 U.S.C. 552(a)(6) until the request has been received by the appropriate office, or would have been received with the exercise of due diligence by Service personnel. Service Form G-639, Freedom of Information/Privacy Act Request, may be used for rapid identification as a Freedom of Information matter and to ensure expeditious handling; however, a request may be submitted in any written form. Each request made under this section pertaining to the availability of a record must describe the record with sufficient specificity with respect to names, dates, subject

matter and location to permit it to be identified and located. A request for all records falling within a reasonably specific category shall be regarded as reasonably described if the description enables the records to be identified by any process not unreasonably burdensome. If it is determined that the request does not reasonably describe the records sought, the response rejecting the request on that ground shall specify the reason why the request failed to meet requirements and shall extend to the requester an opportunity to confer with Service personnel to reformulate the request. Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number if applicable.

(b) *Authority to grant and deny requests*—(1) *Grant or deny*. The Associate Commissioner for Information Resources Management, regional administrators, district directors, service center directors, and heads of sub-offices specified in paragraph (a)(1) of this section, or their designees, may grant or deny requests under exemptions in 5 U.S.C. 552 (b) and (c).

(2) [Reserved]

(3) *Authority to state that a record cannot be located or does not exist*. The head of any office specified in paragraph (a)(1) of this section has authority to notify a requester that a record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of.

(c) *Prompt response*—(1) *Response within 10 days*. Within 10 days (excluding Saturdays, Sundays, and legal holidays) of the receipt of a request by the Service (or in the case of an improperly addressed request, of its receipt by the appropriate office as specified in paragraph (a) of this section), the authorized Service official shall either comply with or deny the request unless an extension of time is requested as required under 28 CFR 16.1(d). A request improperly addressed will not be deemed to have been received for purposes of 5 U.S.C. 552 (a)(6) until it has been or would have been received by the appropriate office with the exercise of due diligence by Service personnel.

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(2) *Treatment of delay as a denial.* If no substantive reply is made at the end of the 10 working day period, and any properly invoked extension period, requesters may deem their request to be denied and exercise their right to appeal in accordance with 28 CFR 16.8 and paragraph (d)(3) of this section.

(d) *Disposition of requests*—(1) *Form of grant.* When a requested record is available, the responsible office shall notify the requester when and where the record will be available. The notification shall also advise the requester of any applicable fees under 28 CFR 16.10. The Service shall have fulfilled its duty to grant access whenever it provides a copy of the record, or, at its discretion, makes the original record or a copy available for in-person review in response to an express request for such review. In-person review is discretionary and shall not be granted when doing so would unreasonably disrupt the normal operations of a Service office.

(2) *Form of denial.* A reply denying a written request for a record in whole or in part shall be in writing, signed by one of the officials specified in paragraph (b)(1) of this section. The reply shall include a reference to the specific exemption under the Freedom of Information Act authorizing withholding of the records. The notice of denial shall contain a brief explanation of how the exemption applies to the record withheld and, if the deciding official considers it appropriate, a statement of why the exempt record is being withheld. The notice of denial shall include a statement of the right of appeal to the Attorney General under 28 CFR 16.8, and that judicial review will thereafter be available in the district in which the requester resides or has a principal place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Right of appeal.* When a request for records has been denied in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Assistant Attorney General, Office of Legal Policy, (Attention: Office of Information and Privacy), Department of Justice, Washington, DC 20530. Both the envelope and letter must be clearly marked: “FREEDOM OF INFORMA-

TION APPEAL” or “INFORMATION APPEAL.”

(e) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to \$25.00 by filing a Freedom of Information Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgment must confirm the requester’s obligation to pay.

[40 FR 7237, Feb. 19, 1975, as amended at 41 FR 34938, Aug. 18, 1976; 42 FR 15408, March 22, 1977; 43 FR 22332, May 25, 1978; 44 FR 23514, Apr. 20, 1979; 48 FR 49652, Oct. 27, 1983; 48 FR 51430, Nov. 9, 1983; 52 FR 2942, Jan. 29, 1987; 58 FR 31148, 31149, June 1, 1993]

§ 103.11 Business information.

Business information provided to the Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with 28 CFR 16.7.

[58 FR 31149, June 1, 1993]

§ 103.12 Definition of the term “lawfully present” aliens for purposes of applying for Title II Social Security benefits under Public Law 104–193.

(a) *Definition of the term an “alien who is lawfully present in the United States.”* For the purposes of section 401(b)(2) of Pub. L. 104–193 only, an “alien who is lawfully present in the United States” means:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104–193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(b)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy